

Final

**Rhode Island Supreme Court
Ethics Advisory Panel
Opinion No. 2001-03 Request No. 822
Issued May 17, 2001**

FACTS:

The inquiring attorney represents a client who was previously represented by another attorney in a personal injury matter. The client's first attorney had obtained an offer of settlement which the client would not accept. As a result of this and also what appears to have been a breakdown in the attorney-client relationship, predecessor counsel withdrew from the representation.

The inquiring attorney recently obtained an arbitration award on behalf of the client. Predecessor counsel has asserted a lien on the proceeds equal to one-third of the previously rejected settlement offer. The inquiring attorney disputes the amount of the lien, and seeks the Panel's guidance.

ISSUE PRESENTED:

(1) Is predecessor counsel entitled to payment equal to one-third of the rejected settlement offer? (2) Is the inquiring attorney obligated to escrow the amount claimed by predecessor counsel?

OPINION:

(1) Predecessor counsel is entitled to payment on a quantum meruit basis only. The issue of what amounts are due to predecessor counsel is a substantive law question which is outside the area of legal ethics and discipline. (2) Pursuant to Rule 1.15, the inquiring attorney has an obligation to protect the amount claimed by predecessor counsel by either placing the disputed funds in his/her client's account until the matter is resolved, or paying them into the court registry in an interpleader action.

REASONING:

Under the facts of this inquiry, predecessor counsel is not entitled to a contingency fee. See, e.g. Ashford v. Interstate Trucking Corp. Of Amer. Inc., 524 N.W. 2d. 500 (Minn. 1994) (amount of attorney's lien when attorney justifiably withdraws from contingency fee case may not be based on terminated contingency contract.) The fee should be based on quantum meruit, that is, the fair value of services rendered before predecessor counsel's termination of the

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representation.¹ See R.I. Sup. Ct. Ethics Advisory Panel Op. 92-61 (1992). A determination of the fair value of predecessor counsel's services is a matter of substantive law which is outside the area of legal ethics and discipline.

The attorneys and the client should attempt to reach an agreement on the reasonable value of predecessor counsel's services prior to his/her withdrawal, and if that fails, then the attorneys and the client should consider submitting the fee dispute to a court or to the bar association's fee-arbitration program. Accordingly the inquiring attorney must either escrow the disputed funds in his/her client's account until the matter is resolved, or pay them into the court registry in an interpleader action.

¹ Quantum meruit is generally determined by multiplying the number of hours worked by a reasonable hourly fee. However, the determination of the fair value of services performed by a predecessor attorney in a contingency fee case is not limited to this formula. See e.g. Ashford v. Interstate Trucking Corp. Of Amer., Inc., 524 N.W. 2d. 500 (Minn. 1994) (When an attorney justifiably withdraws from contingency fee case, court is not limited to considering only attorney's hourly rate and number of hours worked when determining amount of attorney's lien.)